

# **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4

5 FACEBOOK, INC., )  
6 )  
7 Plaintiff, ) Case No.  
8 vs. ) 5:08-cv-05780 JW (JCS)  
9 )  
10 POWER VENTURES, INC., a )  
11 Cayman Island Corporation; )  
12 STEVE VACHANI, an individual; )  
DOE 1, d/b/a POWER.COM, )  
DOES 2-25, inclusive, )  
Defendants. )  
\_\_\_\_\_ )

13  
14  
15 CONFIDENTIAL  
16

17 VIDEOTAPED DEPOSITION of POWER VENTURES,  
18 INC.'S 30(b)(6) Designee STEVEN VACHANI taken on behalf  
19 of Plaintiff, at Orrick, Herrington & Sutcliffe LLP, 405  
20 Howard Street, 10th Floor, San Francisco, California  
21 beginning at 9:13 a.m., Monday, January 9, 2012, before  
22 CHERREE P. PETERSON, RPR, CRR, Certified Shorthand  
23 Reporter No. 11108.  
24  
25

1 SAN FRANCISCO, CALIFORNIA

2 JANUARY 9, 2012

3 ---oOo---

4 BE IT REMEMBERED that set on Monday, the 9th  
5 day of January, 2012, commencing at the hour of 9:13  
6 a.m., at the office of Orrick, Herrington & Sutcliffe  
7 LLP, 405 Howard Street, 10th Floor, San Francisco,  
8 California, before me, Cherree P. Peterson, RPR, CRR,  
9 CSR No. 11108, a Certified Shorthand Reporter,  
10 personally appeared

11 POWER VENTURES, INC.'S 30(b)(6) Designee

12 STEVEN VACHANI,

13 having been called as a witness by the plaintiff, who  
14 having been sworn by me to tell the truth, the whole  
15 truth and nothing but the truth, was thereupon examined  
16 and testified as hereinafter set forth.

17 ---oOo---

18 (Plaintiff's [Exhibit No. 188](#) marked for  
19 identification.)

09:13 20 THE VIDEOGRAPHER: Good morning. My name is  
21 Lindsay Lewis. I'm a certified legal video specialist  
22 today for Barkley Court Reporters. Barkley Court  
23 Reporters is located at 222 Front Street, Suite 600, in  
24 San Francisco, California. Today is January 9th, 2012.  
09:13 25 The time is 9:13 a.m. We are located today at 405

1 finish a line of questioning. Is that all right with  
2 you?

3 A. That's okay.

4 Q. Okay. So let's go ahead and get started. I  
09:18 5 put in front of you Exhibit No. 188. Do you see that  
6 document?

7 A. Yes, I do.

8 Q. This is a notice of deposition of Power  
9 Ventures pursuant to Federal Rule of Civil Procedure  
09:18 10 30(b)(6). Do you understand that you are testifying  
11 today as a corporate designee of Power Ventures as to  
12 the topics that are listed in that notice?

13 A. Yes, I do.

14 Q. And you understand that the testimony you give  
09:18 15 today is binding on Power Ventures as to the things that  
16 -- the topics that are listed in those -- in the notice?

17 A. Yes, I do.

18 Q. Have you reviewed that notice?

19 A. I have reviewed it.

09:18 20 Q. Okay. And did you do anything to prepare to  
21 testify as the corporate designee of Power ventures?

22 A. I have met with counsel today for about one  
23 hour, from 8:00 a.m. to 9:00 a.m.

24 Q. Anything else?

09:18 25 A. Beyond -- I read this notices and I read

1 excerpts of previous depositions.

2 Q. And whose other depositions?

3 A. Which depositions did you -- did you provide  
4 me?

09:19 5 MR. FISHER: I can't --

6 Q. BY MR. CHATTERJEE: Testify to --

7 MR. FISHER: What you know.

8 Q. BY MR. CHATTERJEE: Testify to the best of  
9 your recollection.

09:19 10 A. I believe I -- I saw -- I referenced Zak, Zak  
11 Mandhro's deposition.

12 Q. Anyone else?

13 A. There was Zak Mandhro, Robert Pollock, and Ed  
14 Niehaus.

09:19 15 Q. Did you read all of the depositions --

16 A. No.

17 Q. -- or certain excerpts?

18 A. I didn't even -- didn't read them, except I  
19 read excerpts of one or -- of two of them.

09:19 20 Q. So which ones did you read excerpts of?

21 A. I read excerpts of Rob Pollock's and Zak  
22 Mandhro's.

23 Q. You didn't read any of Mr. Niehaus'?

24 A. I didn't get around to it.

09:19 25 Q. Okay. Did you review any documents to prepare

1 for your deposition as a corporate designee?

2 A. You're talking about recently or in the past?

3 I mean, in the past I have reviewed many of the

4 documents that have been exchanged of evidence. But

09:20 5 nothing in the last few days.

6 Q. Okay. So my question was really, really

7 precise. Was -- in preparation for your testimony as a

8 corporate designee, did you review any documents to

9 prepare yourself?

09:20 10 A. I did not.

11 Q. Okay. Have you talked with Eric Santos during

12 the course of this litigation about how, for example,

13 the -- the PowerScript code operated?

14 MR. FISHER: Objection. Vague.

09:20 15 THE WITNESS: Have I talked to him during this

16 investigation about how it operated?

17 Q. BY MR. CHATTERJEE: Correct.

18 A. I've -- I've talked -- the answer is not

19 recently, but I've obviously in the past had many

09:20 20 conversations on -- on the PowerScript code with Eric.

21 Q. What about within the past year?

22 A. In the past year I have not talked about the

23 PowerScript code. I've had very specific e-mails when

24 there have been in the past questions like where I've

09:21 25 asked him one or two questions when they've come up in

1 the case. And some -- sometimes he's answered if he's  
2 had the time. Other times he has not answered.

3 Q. Okay. Other than reviewing excerpts of Mr.  
4 Mandhro and Mr. Pollock's depositions, did you do  
09:21 5 anything else to prepare to testify as the corporate  
6 designee at Power Ventures?

7 A. I -- I reviewed the -- the recent what do you  
8 call it -- what do we refer -- the statements that have  
9 been exchanged the last two months by Facebook. And  
09:21 10 they -- I -- I forget what we call them.

11 Q. The summary judgment motions?

12 A. The summary judgment motions, I have  
13 reviewed -- reviewed those.

14 Q. Okay. So anything else?

09:21 15 A. To my best recollection, no.

16 Q. Okay. So let's start with Mr. Mandhro. What  
17 did you review from Mr. Mandhro's depositions?

18 A. I just glanced through the -- the transcript.

19 Q. So there wasn't a specific excerpts you were  
09:22 20 reading, you just kind of --

21 A. I just glanced through it to see, you know,  
22 the general line of questioning and discussions that  
23 were discussed in that conversation.

24 Q. Was there anything that you read in there that  
09:22 25 you disagreed with?

1           A.       No.    What, that I -- not that I -- my best of  
2   my recollection I had a very minimal time.   I was -- I  
3   only received it in the last two days.   And I've been on  
4   a flight for the last 48 hours due to huge flight  
09:22 5   problems.   So I have not really had a significant time  
6   to -- to review it in detail.

7           Q.       Are you prepared to testify as the corporate  
8   designee today given the limited time you've had?

9           A.       I'm prepared, yeah.

09:22 10          Q.       And -- and you don't need to know anything  
11   about what Mr. Mandhro said in order -- in order for you  
12   to testify as the corporate designee?

13          A.       I've reviewed -- I reviewed that, Mr.  
14   Mandhro's.   I have not reviewed Ed Niehaus'.   And Rob's,  
09:22 15   I have more sparsely reviewed his.

16          Q.       But my question's a little simpler than that.

17          A.       Yeah.

18          Q.       Do you need to review those depositions in  
19   order to feel that you are fully prepared to testify on  
09:23 20   behalf of Power Ventures as to the topics we've  
21   identified?

22          A.       I do not.

23          Q.       So without disclosing any privileged  
24   conversations, why were you reviewing those to prepare  
09:23 25   for your deposition?



1 A. Yeah, I don't -- I don't believe it -- it was  
2 tracked. But I -- but I -- I believe that we -- there  
3 was an e-mail on December 27th where it was actually an  
4 exhibit. I don't know if we have that. I would just --  
10:40 5 if we have that handy by any chance?

6 Q. I -- I -- I don't. But I just -- I'm just  
7 trying to get a sense of --

8 A. Yeah.

9 Q. -- there was some information you were  
10:40 10 tracking. Was there any particular reason that -- that  
11 Power was not tracking event invitations that were or  
12 notifications that were sent?

13 A. Event creations, I -- I -- I don't -- I don't  
14 know the answer. I think that we -- that there was a  
10:40 15 question. That's why I'd like to see since it was a  
16 long time ago the -- this -- this conversation we've had  
17 before. And, in fact, upon having it even at that --  
18 we've -- we've provided answers. So if it would be good  
19 to reference those, because I think this subject has  
10:41 20 been discussed.

21 Q. But whatever the answer was in that -- in that  
22 e-mail correspondence is --

23 A. Correct.

24 Q. -- Power Ventures' position?

10:41 25 A. That's correct.

1 Q. -- did you -- did you track the numbers of  
2 status updates that were placed on Facebook or event  
3 notifications that were placed on Facebook?

4 A. The -- the -- whatever -- if it was -- if it  
10:47 5 was in the -- I believe it -- if it was tracked, we  
6 would have -- we would have had it. So I don't see any  
7 e-mails referring to it and I don't see any -- any  
8 statistics. If we had an e-mail in the past that we  
9 provided, then -- because it's obviously been three  
10:47 10 years of questions. I don't know specifically. But to  
11 the best of my knowledge, I don't -- I don't believe we  
12 tracked status updates. But I remember there was a  
13 discussion on event creation and I don't -- I don't know  
14 if you have that dialogue handy?

10:47 15 Q. Yeah, I know what you're talking about.

16 A. Yeah.

17 Q. Let me --

18 A. Yeah. It would just probably be better just  
19 to refer to that so I can refresh my memory.

10:47 20 Q. I'm trying to just really narrow down the  
21 issues here.

22 A. Sure.

23 Q. Do you have any knowledge as you sit here

24 today how many Facebook users received status updates

10:47 25 that discussed the hundred by hundred by hundred

1 promotion?

2 A. I don't right -- I don't have that information  
3 right now.

4 Q. Okay. If that information did exist at Power,  
10:48 5 where would it exist?

6 A. Where would it have existed? I'd have -- I'd  
7 need to get clarification on that. I can -- on that  
8 specific question I -- I could -- I could inquire and --  
9 and ask if we haven't already covered that in the past.

10:48 10 Q. Who -- who would you need to ask?

11 A. I would actually try to go back to Leandro who  
12 was -- it would be a favor. He hasn't worked for the  
13 company for a long time. But he was one of the last  
14 people. I would try to --

10:48 15 Q. Would that --

16 A. -- see if -- see if that -- to find out how  
17 that would have been tracked. If -- but I believe we've  
18 actually discussed this in the past though.

19 Q. Right. If that was tracked, would there be --  
10:48 20 would it be reflected in the code?

21 A. It would -- there's two things. There's the  
22 ability to track it and whether it was actually being  
23 tracked. So the code -- for example, on the database  
24 there are tables that are referred to that we never  
10:49 25 actually -- you know, sometimes you have code to be able

1 to track it. But because of resources it's too -- too  
2 -- it requires too much server power or too many things,  
3 certain things are not turned on. And that's -- that's  
4 happened in many -- in many cases.

10:49 5 For example, as we've referred to on  
6 November -- you know, on November 23rd we had changed  
7 servers of 2008. We had changed server companies that  
8 week. And afterwards we had disabled a lot of  
9 functionality that we had previously had that was too --  
10:49 10 too taxing. So there might have been code that said  
11 this could exist. And this actually came up in some of  
12 the conversations of Monte was trying to understand  
13 why -- why on November 23rd after that there was no --  
14 some -- some functionality. This is well before we even  
10:49 15 turned on Facebook. We had -- we had changed servers  
16 the week before we launched. A lot of -- we were --  
17 launched Facebook and many other things just because of  
18 cost -- cost -- cost restrictions.

19 Q. Right. So to the extent that the information  
10:50 20 existed --

21 A. Yeah.

22 Q. -- and was actually tracked, it would be  
23 reflected in -- in the code. There would be code  
24 functionality that would enable it and then there would  
10:50 25 actually be data in the database that was actually

1 tracked, right?

2 A. There would be data in the data -- that's  
3 correct.

4 Q. Okay. And we've referred generally to the  
10:50 5 database.

6 A. Yes.

7 Q. Can you tell me what that was called or what  
8 the file name of it was?

9 A. I -- the file names you guys have -- have  
10:50 10 reviewed everything that was there. So you -- you guys  
11 have probably -- your guys probably have better  
12 knowledge of that than I do personally. I mean, because  
13 you guys -- probably the most -- recently analyzed it  
14 the most.

10:50 15 Q. Do you know if that database exists today?

16 A. Everything -- everything that was -- we  
17 provided everything that exists today to you guys. And  
18 as far as I understand, everything -- and again was --  
19 everything -- you guys were able to find all files  
10:50 20 except for a specific file that we -- we have that we've  
21 discussed that was a -- a -- a log-in file of -- of  
22 links of, like, pages visited, which I think that was  
23 the -- that was the file that was 180 gigs that was  
24 available for three years. But on two -- in -- on  
10:51 25 August 2011 was not able -- it was too large to transfer

1 during a -- because we were doing an internet transfer  
2 of data.

3 Q. And that -- that -- that 180 gig file, would  
4 that have data associated with log-ins to Facebook?

10:51 5 A. No. That -- that would have -- that wouldn't  
6 be storing log-ins to Facebook. This was -- this was a  
7 more general just like the page -- the pages visited.  
8 So that's why it was so large. It's like a -- so --

9 Q. When you say "pages visited," what do you  
10:51 10 mean?

11 A. Our links. So, like, if there's a -- you  
12 know, a link on -- anything on -- as a user went  
13 throughout Power it tracked, I believe. It was a --  
14 a -- a general thing of just their -- their -- their  
10:52 15 click -- click flow I believe. I don't know for sure,  
16 but I believe it was links clicked on.

17 Q. So with that, the Power browser -- I'll refer  
18 to the Power browser. You know what I mean when I refer  
19 to that.

10:52 20 A. Yeah.

21 Q. It would have a number of different boxes  
22 or -- I'll refer to them as boxes for the different  
23 social networks it connected to?

24 A. Correct.

10:52 25 Q. Do you know what I'm referring to?

1 was available and accessed in whatever -- if anything,  
2 it was referenced in any questions. If -- I don't know  
3 if that was specifically where -- but it was -- it was  
4 -- it existed until that date, that's correct.

11:02 5 Q. Okay. And then following that you made the  
6 decision to delete that database?

7 A. Yeah. As you can see, the dialogue there we  
8 didn't have the time with -- to transfer it before our  
9 servers would be shut off. So they -- the decision was  
11:02 10 transfer all the most valuable stuff and if we have time  
11 and they're not shut off, do these two last.

12 Q. Other than what's stated in this e-mail, do  
13 you know specifically what was in the logger database?

14 A. I do not know specifically. This was why I  
11:02 15 asked that question right there.

16 Q. But other than what's stated here?

17 A. I -- I do not know.

18 Q. So as you sit here today, you don't know, for  
19 example, if the logger database would track event  
11:03 20 invitations sent through links to -- to Facebook users?

21 MR. FISHER: Objection. Vague. Assumes facts  
22 be in evidence.

23 THE WITNESS: What I do --

24 MR. FISHER: Lacks foundation. Incomplete  
11:03 25 hypothetical.

1 THE WITNESS: What I do know is that questions  
2 relating to the events and these things were asked by  
3 Facebook and -- and truthfully answered to the best of  
4 our knowledge for the previous three years would have  
11:03 5 referenced and accessed whatever was available to us.  
6 So the date that this was deleted, any question -- mass  
7 amount of questions that were previously asked were  
8 already asked. And I don't know if it was referring to  
9 this or not, but they were -- we had access to -- to  
11:03 10 provide data to -- to requested questions in the  
11 previous -- in the previous three years.

12 Q. BY MR. CHATTERJEE: Okay. So if I understand  
13 what you're saying correctly is if -- if that  
14 information had been in the logger database, you would  
11:03 15 have referred to it and provided that information  
16 already?

17 A. Correct. But I don't know if we referred to  
18 it or not.

19 Q. Okay.

11:03 20 A. So this was only on April 17th, three years.  
21 And 2008 obviously is when we I think had the -- the  
22 lawsuit. You know, the first time that we interacted  
23 with Facebook.

24 Q. And if we wanted to test the accuracy of  
11:04 25 whatever you investigated, we couldn't do that today



1 because whatever is in that logger database is no longer  
2 available to us, right?

3 MR. FISHER: Objection. Vague.

4 THE WITNESS: What we could -- what I could  
11:04 5 find out -- what we could find out is I -- I could find  
6 out more details on -- if -- I don't know if I could  
7 ask. I could try to inquire more details on -- on this  
8 logger -- logger database, but that -- that file is no  
9 longer available today.

11:04 10 Q. BY MR. CHATTERJEE: Right.

11 A. It was available until April 17th.

12 Q. And when you say "inquire," you would have to  
13 ask Mr. Fernandes or -- and Eric Santos?

14 A. I would basically -- yeah. I would go and try  
11:04 15 to -- to ask one of the original programmers to provide  
16 further details on that file.

17 Q. Yeah. Or the code might say.

18 A. Or the code -- the code might -- the code  
19 might say. I would probably go to them to get a  
11:04 20 clear -- clear answer to that.

21 Q. Did you ever ask whether the logger -- at the  
22 time you were discussing all of this in November of 2011  
23 -- well, it looks like April of 2011. Scratch it. Let  
24 me start over.

11:05 25 In the April 2011 time frame when you were

1 social" networks will to try to block your access by  
2 delayed server response or denied some service.

3 THE REPORTER: Okay. Repeat that, please.

4 THE WITNESS: Delayed server response or  
11:53 5 denied some service. So, yeah, he -- I think he's just  
6 saying here that in general more IPs in your proxy  
7 server. That's what -- exactly what it says in the  
8 e-mail.

9 MR. FISHER: Objection. Vague.  
11:53 10 Mischaracterizes the document.

11 Q. BY MR. CHATTERJEE: So we're -- we're going to  
12 get back to this later. But the idea of having multiple  
13 rotating IP addresses to avoid efforts to block Power  
14 Ventures is an idea that goes back to the founding of  
11:53 15 Power in 2005, right?

16 A. Not to block Power. It's, as I said, there  
17 are standard -- when you're accessing with a -- a site  
18 having multiple IP addresses with a proxy is -- is a  
19 standard procedure. That's correct. It goes -- it goes  
11:53 20 back to the beginning. It was not something that was  
21 employed -- it's -- you know, for --

22 Q. So -- so -- so --

23 A. -- for Facebook.

24 Q. This is a -- I'm going to ask a really, really  
11:53 25 precise question.

1 A. Okay.

2 Q. Which is since 2005, one of the reasons that  
3 Power Ventures wanted to employ multiple IP addresses is  
4 because it would make it more difficult for a web site  
11:54 5 to block Power Ventures from accessing their web site?  
6 And she can read it back if it's not clear.

7 MR. FISHER: Objection. Vague.

8 THE WITNESS: Okay. So let me -- let me  
9 answer the question. Is it -- how -- when we started  
11:54 10 building in 2006, everything that we were doing as a  
11 company was new and innovative. There were no -- there  
12 were -- we didn't know what was going to be happening in  
13 the internet. We built a system that would -- we were  
14 building a browser that was going to be interacting with  
11:54 15 many sites. There was not some specific agenda. We --  
16 we know that anything is possible. So we built -- we --  
17 we looked -- we wanted -- in -- in our -- in our effort  
18 for our users to be able to access the sites that they  
19 want to access freely, we -- we built in a range of -- a  
11:54 20 range of mechanisms, one of those being that IP  
21 addresses rotate. Those blocks are not -- are -- are  
22 many times automatic blocks that have nothing to do with  
23 deliberate attempts to block.  
24 In fact, most of those blocks historically  
11:55 25 were not specifically intended at Power. They were

1 automatic things because they didn't know what was  
2 accessing their site. And, in fact -- which a  
3 conversation that we will probably get to later is that  
4 we've actually had conversations with sites that just  
11:55 5 wanted to under -- just came to us and said we'd like to  
6 understand how your systems work. And then later said,  
7 oh, okay, great, we just didn't know if this was a  
8 standard site that was user driven or if this was some  
9 type of other type of, you know, foreign, you know,  
11:55 10 hostile entity.

11 And most sites previously, with the exception  
12 of Facebook, have come to the conclusion that, you know,  
13 this was a user-generated activity. So I think it's  
14 very easy -- you have to look at this as this was a  
11:55 15 standard thing that was operating and operating in a  
16 friendly manner with many sites without a problem, you  
17 know, where usually it was a matter of just discussions  
18 with sites. And that's the -- it is correct that this  
19 is -- this -- this is a technique that was employed well  
11:56 20 before Facebook and was utilized for, you know, two --  
21 not three year -- two years, about two years previously  
22 for as we were building out this system.

23 MR. CHATTERJEE: Move to strike as  
24 nonresponsive. Could the court reporter read my  
11:56 25 question back, please.

1 (Whereupon the record was read as requested.)

2 THE WITNESS: Okay. So, as I said, the -- I

3 answered the question, I believe. Is that many sites

4 have standard responses to -- to entities that they do

11:57 5 not under -- which they have not interacted before,

6 especially when they have high traffic. And so this was

7 initially built with -- with that purpose, understanding

8 that -- and, in fact, I -- I believe the Electronic

9 Frontier Foundation has answered this question even more

11:57 10 articulately in the past. And rather than try you to,

11 you know, answer it again, I think that you should refer

12 to our previous responses on this.

13 MR. CHATTERJEE: Move to strike as

14 nonresponsive. I'm going to ask you one more time. I'm

11:57 15 going to ask the court reporter to read it back. If

16 there's anything ambiguous about my question, I want you

17 to tell me.

18 But could the court reporter read my question

19 back one more time. You aren't answering my question,

11:57 20 Mr. Vachani.

21 MR. FISHER: He's answering the question,

22 Neel.

23 MR. CHATTERJEE: Go ahead and read it back.

24 (Whereupon the record was read as requested.)

11:58 25 THE WITNESS: I would ask you to read back my

1 previous answers that I've already stated.

2 Q. BY MR. CHATTERJEE: Okay. So beyond what  
3 you've said, you're not changing your answer?

4 A. That's correct.

11:58 5 Q. You cannot answer that question with a yes or  
6 a no?

7 A. I've answered it. I've answered it as best as  
8 I can.

9 Q. Okay. So can you answer it with a yes or a no  
11:58 10 or not?

11 MR. FISHER: Asked and --

12 THE WITNESS: I've answered --

13 MR. FISHER: -- answered. Argumentative.

14 THE WITNESS: I've answered the question.

11:58 15 MR. FISHER: Let's move on.

16 MR. CHATTERJEE: Okay. So let's mark this as  
17 Exhibit 199 I think.

18 (Plaintiff's [Exhibit No. 199](#) marked for  
19 identification.)

11:59 20 Q. BY MR. CHATTERJEE: Before we go through the  
21 depths of this e-mail, Mr. Vachani, this is a, I  
22 believe, an instant chat log between you and someone  
23 named Abi, A-b-i.

24 A. Yeah. First of all, this is -- this is --  
11:59 25 this e-mail predates by a factor of almost a year and a

1 misleading in your submission to the court under oath in  
2 paragraph 11?

3 A. No.

4 MR. FISHER: Objection. Argumentative.

12:34 5 Q. BY MR. CHATTERJEE: That's truthful and  
6 accurate?

7 A. Yes. That's exactly what it says.

8 Q. So when -- when Power accessed the Facebook  
9 web site, I believe your testimony has been it would be  
10 only at the direction of a user, correct?  
12:34

11 A. The user chose to access the site, correct.

12 Q. So isn't it fair to say that when a user is  
13 accessing Facebook through the power.com web site,  
14 anything that's being done to do that is a tool that the  
12:34 15 user is using?

16 MR. FISHER: Objection. Vague. Assumes facts  
17 not in evidence. Lacks foundation.

18 THE WITNESS: It's -- it's a vague statement.

19 Q. BY MR. CHATTERJEE: How do you reconcile the  
12:35 20 statement in Exhibit 200 where you say "we were able to  
21 easily adjust" with your unequivocal statement in  
22 paragraph 11 that "Power did not take any effort to  
23 circumvent that block..."?

24 MR. FISHER: Objection. Argumentative.

12:35 25 THE WITNESS: So I -- I've stated this already

1 and I'll state it again. Power -- the -- as it states  
2 right here, "Facebook's IP block was ineffective because  
3 it blocked only one" "IP address" and "did not block  
4 other IPs...." So the statement -- you -- you're trying  
12:35 5 to take the full statement of number 11 where we clarify  
6 that -- that Facebook did have an IP block and why --  
7 and so we were truthfully saying it was ineffective  
8 because it only blocked one. And that's why users were  
9 able to continue to access the site. So we're not  
12:35 10 hiding the fact that our -- that our -- that we utilized  
11 an IP rotating database. We've given you access to our  
12 server code that states this and -- and we're saying  
13 here. So if you -- if -- and so our -- our -- our  
14 interpretation of this and our -- our belief is that if  
12:36 15 the -- if this is -- this is -- this was always a  
16 standard part of our business and it -- we don't -- we  
17 don't see anything wrong -- we don't see anything wrong  
18 that if a user is coming to our site and the system  
19 updates in order to access it.

12:36 20 Q. BY MR. CHATTERJEE: Move to strike as  
21 nonresponsive. I'm not asking whether you see something  
22 right or wrong.

23 A. Okay.

24 Q. Let me just ask it a real simple way.

12:36 25 A. Okay.



1 Q. Did power.com through its rotating IP address  
2 approach circumvent the block that Facebook put in place  
3 or not?

4 A. That's where for you -- I think we've stated  
12:36 5 in -- in -- in statement 11 our opinion on this issue.

6 MR. CHATTERJEE: Would you read the question  
7 again, please, Madam Court Reporter.

8 (Whereupon the record was read as requested.)

9 THE WITNESS: And I'll read this answer again.

12:36 10 "Nevertheless, Facebook's IP block was ineffective  
11 because it blocked only one outdated IP address" and  
12 Power used and did not block other I --

13 THE REPORTER: I'm sorry.

14 THE WITNESS: Sorry.

12:37 15 THE REPORTER: Blocked only one data IP  
16 address?

17 THE WITNESS: "...blocked only one outdated IP  
18 address" that "Power had used, and did not block other  
19 IPs that Power was using in" its "normal course of  
12:37 20 business."

21 Q. BY MR. CHATTERJEE: Okay.

22 A. I -- I'm repeating what was stated in number  
23 11 in answering your question.

24 Q. The -- the -- the problem is paragraph 11 is a  
12:37 25 declaration that you submitted to the court.

1 A. Yeah.

2 Q. That isn't a question you were asked.

3 Read the question again --

4 A. Okay.

12:37 5 MR. CHATTERJEE: -- Madam Court Reporter.

6 (Whereupon the record was read as requested.)

7 THE WITNESS: And I'm saying that number 11 --

8 I'm repeating that again. Face -- that -- that's my

9 answer. It's what we've already stated in this

12:37 10 statement.

11 Q. BY MR. CHATTERJEE: Why can't you answer my  
12 question with a yes or no?

13 MR. FISHER: Objection. Argumentative.

14 THE WITNESS: I've just answered it.

12:37 15 MR. FISHER: Objection. Argumentative.

16 THE WITNESS: I've answered it more -- more

17 descriptively and I've actually reinstated the same

18 statement that I've -- that I've said here in this -- in

19 this testimony.

12:37 20 Q. BY MR. CHATTERJEE: You haven't. Because the

21 way that this question is answer it -- is answering it

22 is you're saying there's a specific block that's put up

23 and there wasn't a preexisting technology. Right?

24 That's the assumption in this -- in this statement.

12:38 25 My question is when the block was put up, did

1 Power Ventures circumvent it or not?

2 MR. FISHER: Objection. Argumentative.

3 Vague. Mischaracterizes prior testimony.

4 THE WITNESS: I --

12:38 5 MR. FISHER: Mischaracterizes his declaration.

6 THE WITNESS: I think the statement already

7 answers the question. And if you don't -- if you

8 disagree, then you disagree.

9 Q. BY MR. CHATTERJEE: Were you lying to your

12:38 10 investor when you said you were able to easily adjust?

11 MR. FISHER: Objection. Argumentative.

12 Mischaracterizes the exhibit.

13 THE WITNESS: I'm saying to you that -- that

14 -- that the block was ineffective because it blocked

12:38 15 only one address. And I've also said to you -- said to

16 you that our system, you know, all -- this is a standard

17 feature in our system that if it cannot access it

18 automatically, it automatically tries again. So if

19 you -- if you want to -- we've -- that's what we've

12:38 20 always said. It's not -- it's exactly what we said in

21 this statement, that we use multiple IP addresses. We

22 have said that. And finally, there have been arguments

23 in the past we've -- where we've discussed this issue in

24 our -- in our -- in our thoughts and what we've done.

12:39 25 Q. BY MR. CHATTERJEE: Okay. So the rotating IP

1 approach was -- one of the purposes was to allow for  
2 access when a web site blocked you, right?

3 A. The rotating IP address just -- it's a  
4 standard thing. If it cannot access a site it -- it --  
12:39 5 it tries again with another IP address. It doesn't know  
6 what the reason. It's a standard feature that -- and  
7 that's what we say here "Facebook's" "block was  
8 ineffective because it blocked only one outdated IP  
9 address Power used, and did not block other IPs that  
12:39 10 Power was using in" its "normal course of business." I  
11 mean, I've answered this question many times already.  
12 And I'm -- and it's the same statement that we made  
13 here.

14 Q. All right. Did Power's rotating IP addresses  
12:39 15 allow a Power user to access the Facebook web site  
16 despite the fact that Facebook had implemented a block?

17 MR. FISHER: Objection. Vague.

18 THE WITNESS: I'll answer it again.  
19 Facebook's IP block -- this answers the question right  
12:39 20 there. It -- it obviously says it was ineffective and  
21 therefore the user accessed the site because it only --  
22 it only blocked one IP address that Power had used and  
23 did not block other IPs that Power was using in its  
24 normal course of business.

12:40 25 MR. CHATTERJEE: Madam Court Reporter, please

1 read the question back.

2 (Whereupon the record was read as requested.)

3 THE WITNESS: I think I've answered the  
4 question. I mean, I've answered the question already.

12:40 5 MR. FISHER: Asked and answered.

6 MR. CHATTERJEE: You didn't. You read your  
7 declaration. That question's different.

8 MR. FISHER: That's --

9 THE WITNESS: I've -- I've -- I've given you  
12:40 10 the same answer. That's the same answer.

11 Q. BY MR. CHATTERJEE: Is it a yes?

12 A. I've answered it. I don't need to -- I've  
13 answered it -- I've answered the question.

14 Q. Let me -- let me put it this way.

12:40 15 A. And I've kept it consistent with the same  
16 answer that we --

17 Q. Let me put it this way. After Facebook  
18 implemented a block -- you're with me so far? Facebook  
19 did implement a block. You know that, right?

12:40 20 A. And that's what -- we -- we said that today.

21 Q. I don't care whether you think --

22 A. Facebook's -- Facebook's IP block was  
23 ineffective. So therefore the answer -- you've -- this  
24 question's already been answered in my declaration and  
12:41 25 I've repeated it about four times.

1 Q. So you know that Facebook implemented a block,  
2 correct?

3 A. I think we've answered that question.

4 Q. Did you know that Facebook implemented a  
12:41 5 block --

6 A. Did I know?

7 Q. -- in 2008?

8 A. Or did our system -- did I know? Our system,  
9 as I've said, it cannot access a site. So it -- it  
12:41 10 updated. It used another IP address to access it. So  
11 you can interpret that however. We've -- we've already  
12 stated this.

13 Q. So Power system knew that Facebook was not  
14 allowing access from that IP address?

12:41 15 A. I'm sorry. I've answered this -- I've  
16 answered this question already.

17 Q. Did Power system know that Facebook was not  
18 allowing access from an IP address? Yes or no? It's  
19 not a difficult question, Mr. Vachani.

12:41 20 A. And I've answered this. I think -- I think  
21 our statement's already addressed this. And I'm -- and  
22 I'm repeating the same answer.

23 Q. I'm trying to break it down into smaller  
24 components --

12:41 25 A. Okay.

1 Q. -- so I can understand your testimony.

2 A. Okay.

3 Q. Did Power's system know that Facebook had  
4 implemented a block to a particular IP address?

12:42 5 A. Look, Power -- what Power system knew, that it  
6 was not -- that it was not accessing the site. And as I  
7 said multiple times, our system when it cannot access a  
8 site it automatically uses -- it uses other IPs in the  
9 system that we have been using in our -- in our business  
10 and it accesses the site.

11 Q. And after that block was in place, Power users  
12 were given the ability to access Facebook through a  
13 different IP address, correct?

14 A. I think I've answered that question already.

12:42 15 Q. Is it a yes?

16 A. Again, I don't -- I don't need to answer yes  
17 or no. I've answered it. I've answered it exactly the  
18 way we've answered it in the past. And I've --

19 Q. So could -- could they access it?

12:42 20 A. You can -- you can interpret that as -- as how  
21 you want to interpret that. Again, if you want me to  
22 read this, I'll repeat this again.

23 MR. CHATTERJEE: Okay. So, Tim, we're going  
24 to have a meet and confer after this. And I'm going to  
12:42 25 ask the court to have a deposition of Mr. Vachani in

1 forward to their personal address?

2 A. No. I mean, there -- there was a server.

3 But, I mean, I say everyone -- how they accessed it was  
4 in different ways.

13:57 5 Q. Okay. But that server, would it house the  
6 e-mails that people received as part of the business or  
7 would it just forward things on?

8 A. I -- I don't know how it was exactly work.  
9 But I believe that, you know, there was -- everyone had  
13:57 10 a different way of accessing their -- their e-mails.  
11 That's all I know. And all the people -- like I -- I  
12 accessed mine through Yahoo! and Eric would access  
13 through, you know, his own. Everybody accessed on their  
14 own.

13:57 15 Q. So if that server did have e-mails between  
16 people at Power that didn't include you, that would be  
17 on the backup?

18 A. I mean, yeah, it would be on the backup.

19 Q. Okay. And if it isn't there, then --

13:58 20 A. Yeah. Whatever -- whatever we have is in the  
21 backup.

22 Q. Okay.

23 A. I mean, I don't know the technical details on  
24 how these things were -- were working, so.

13:58 25 Q. And if -- is it Power's view that an -- an



1 e-mail sent to a power.com employee that was then  
2 forwarded to a personal account, who -- whose e-mail is  
3 that? Is that the employee's e-mail or is it Power's  
4 e-mail?

13:58 5 MR. FISHER: Objection. Vague. Calls for a  
6 legal conclusion.

7 Q. BY MR. CHATTERJEE: Do you follow me?

8 A. Yeah.

9 Q. I can give you a concrete example.

13:58 10 A. Yeah.

11 Q. If Eric Santos e-mailed Bruno Carvalho with  
12 some sort of business instruction --

13 A. Yeah.

14 Q. -- and it went to their personal e-mail --

13:58 15 A. Yeah.

16 Q. -- through the server architecture, who would  
17 be the owner of that e-mail?

18 A. Well, I'll --

19 MR. FISHER: Same objections.

13:59 20 THE WITNESS: I'll answer it another way that  
21 -- more practically. That we were a small company. So  
22 if I look at the ten people that I personally  
23 communicated with most regularly and think about each of  
24 them, you know, I mean, from a practical standpoint --  
13:59 25 although this doesn't answer your question -- almost --

1 almost any e-mail, you know, there -- that all the  
2 people that are involved in this situation have -- have  
3 pretty much been -- you know, they're -- they're -- they  
4 had -- they had their own solution. So I don't know who  
13:59 5 own. I mean, we had -- if they had access. If they  
6 chose to copy one person in Power, then obvious -- it's  
7 accessible. And so that's from practical purposes  
8 anything that was copied to me or anything that was  
9 copied to Eric or -- or Rob or Zak or all these key  
13:59 10 people that were in the company, you know, they were all  
11 essentially preserved.

12 Q. BY MR. CHATTERJEE: Right. But if -- let's --  
13 let's say that -- that there was an e-mail that went to  
14 a person's personal e-mail account through the  
13:59 15 forwarding tool on the servers and it had a bunch of  
16 power.com business information, was the employee who  
17 received that e-mail free to go and use that information  
18 however they wanted outside of Power?

19 MR. FISHER: Objection. Vague. Calls for a  
14:00 20 legal conclusion. Incomplete hypothetical.

21 THE WITNESS: In -- in theory, no. I mean,  
22 they're not supposed -- they -- they -- when they sign,  
23 when they join the company, they sign saying that  
24 everything -- their -- their employment contracts, which  
14:00 25 I believe you've seen some, you know, have references

1 A. It's more than 50.

2 Q. Okay. Somewhere between 50 and 60?

3 A. Again, I don't -- I don't know if that's  
4 relevant, the numbers. And they're -- they're changing,  
14:52 5 but....

6 Q. Give me an estimate.

7 A. It's above 50. I mean, it's I guess I don't  
8 --

9 Q. Are any of the investors in Serendipity the  
14:52 10 same as investors in Power Ventures other than you?

11 A. At this point, no.

12 Q. Why would you offer Mr. Santos an employment  
13 contract where he'd be employed by both Serendipity  
14 Ventures and OpenWeb?

14:52 15 A. Because Eric obviously has played -- played a  
16 crucial role in building the Power technology. And if  
17 Serendipity is going to invest, I'd like to see, you  
18 know, him apply his experience and knowledge there. But  
19 we also believe Eric's -- knowing Eric and having worked  
14:52 20 with him for many years and believe that he has much  
21 greater potential and capacity and would like to see him  
22 also contribute to both -- you know, to both -- both  
23 entities.

24 MR. CHATTERJEE: Let's mark this as Exhibit  
14:53 25 208.

1 THE WITNESS: I don't know if they told me  
2 that it was a standard provision. But I didn't -- I  
3 didn't write this. But, you know, I have seen a lot of  
4 terms and conditions. And, you know, I'm not saying I'm  
15:20 5 an expert on them but, you know, this seemed -- seemed  
6 reasonable and, you know, seemed -- seems very standard  
7 and reasonable.

8 Q. BY MR. CHATTERJEE: And the last paragraph on  
9 the third page says "By logging in to our site the user  
15:20 10 is agreeing to and accepting the conditions stated in  
11 these Terms of Use."

12 Do you see that?

13 A. Yes.

14 Q. And was it Power's intention to require its  
15:21 15 users to comply with the terms of service that -- that  
16 it had with its users?

17 A. The terms of service that we had with our  
18 users?

19 Q. Correct.

15:21 20 A. No. I -- I think as you can say that, you  
21 know -- I mean, you can -- you can respond maybe this  
22 way. Sites, including Facebook, explicitly violate  
23 terms and conditions of other sites and have done that  
24 by scraping other sites for other years. And does that  
15:21 25 mean that Facebook is intending, you know, to violate --

1 they violated terms and conditions. Google has an  
2 explicit clause that -- that -- that Facebook and many  
3 other sites -- that Facebook has explicitly scraped data  
4 from sites against their terms and conditions. The fact  
15:21 5 is these are -- this has been happening for years. And  
6 there's -- it's common sense that there's some things  
7 that while there's no legal precedence or no legal laws  
8 on these issues, including the issue of terms and  
9 conditions, which I think there was already a ruling on  
15:22 10 this, you know, in -- in our case itself about -- about  
11 the terms and conditions, which I'm sure you're familiar  
12 with.

13 Again, I think you're -- to try to get --  
14 nitpick a terms and conditions that was written --  
15:22 15 it was to be overarching and say naturally I think sites  
16 historically use common sense and they -- they make  
17 their own subjective decisions if they feel something --  
18 you know, something -- that's -- that's -- each side has  
19 that right. And I believe Facebook -- you know,  
15:22 20 obviously -- that doesn't make it right, but they have  
21 the right to -- you know, Facebook has the right to, you  
22 know, to cancel accounts of users if they want to cancel  
23 accounts of users.

24 Q. That's not my question, Mr. Vachani.

15:22 25 A. What's your question?

1 Q. In that paragraph --

2 A. Yes.

3 Q. -- did power.com intend to hold its users to a  
4 terms of use by asking them to accept the conditions  
15:22 5 stated in them?

6 A. Well, we -- we have a terms -- we have a terms  
7 and conditions. To hold -- as I said --

8 Q. You wanted them to comply, right?

9 A. We wanted them to comply. But we also like --  
15:23 10 like Facebook, like Google, and others, there's common  
11 sense put in -- there's common sense things that have no  
12 legal precedent, that have not been defined, that are --  
13 that are -- that are -- that are not easily -- they're  
14 not -- don't have precedence yet.

15:23 15 Q. Move to strike as nonresponsive.

16 Mr. Vachani, isn't it true that when you had  
17 users on the power.com web site, you asked them to  
18 accept obligations under a term of use?

19 A. Okay. I already answered this question.

15:23 20 Q. Is the answer yes or no?

21 A. I've answered the question.

22 Q. Is the answer yes or no?

23 A. Can you repeat what I said to him and -- and  
24 strike that as my answer?

15:23 25 Q. That's not an answer. Mr. Vachani, I'm asking

1 you a very specific question.

2 A. And I've answered the question. I've said to  
3 you that --

4 Q. I am going to have a meet and confer --

15:23 5 A. -- that --

6 Q. Mr. Vachani --

7 A. Listen to me.

8 Q. Wait. I'm going to have a meet and confer  
9 with your counsel at the end of today.

15:23 10 A. Okay.

11 Q. We are going to send a letter to Judge Spero,  
12 okay, if we don't -- if you don't -- if you refuse to  
13 answer my questions. And I will ask him to either  
14 appoint a special master or to have you sit in the  
15:24 15 witness stand and answer my questions with him calling  
16 the balls and strikes there.

17 Very simple question. Did you ask Power users  
18 to accept a terms of use restriction?

19 MR. FISHER: Objection.

15:24 20 THE WITNESS: I've already told you.

21 MR. FISHER: Asked and answered.

22 Argumentative.

23 THE WITNESS: I've already told you the  
24 answer.

15:24 25 Q. BY MR. CHATTERJEE: Is it yes or no?

1 MR. FISHER: Assumes facts not in evidence.

2 THE WITNESS: -- are you referring to?

3 MR. FISHER: Incomplete hypothetical.

4 THE REPORTER: Okay. Whoa. Whoa. Whoa.

15:25 5 Everybody's talking over each other.

6 THE WITNESS: What law are you referring to?

7 Q. BY MR. CHATTERJEE: Sure. It's very simple.

8 There's a terms of service that you knew restricted the

9 user's ability in using the Facebook web site, correct?

15:25 10 MR. FISHER: Assumes facts not in evidence.

11 Lacks --

12 THE WITNESS: That's not the law.

13 MR. FISHER: -- foundation. Argumentative.

14 THE WITNESS: Facebook terms and conditions is

15:25 15 not a law. You're a lawyer. You understand that.

16 Neel, come on.

17 MR. CHATTERJEE: Go back and read the

18 question, Madam Court Reporter.

19 Answer my question, Mr. Vachani. Not the

15:25 20 question you want to hear.

21 THE WITNESS: I've said to you Facebook's

22 terms and conditions is not a law. And you also are

23 familiar with the -- with the case that --

24 Q. BY MR. CHATTERJEE: Mr. Vachani, you are not

15:25 25 answering my question.



1 A. What is your question?

2 MR. CHATTERJEE: Could you read it back, Madam  
3 Court Reporter. Shall I ask it again? It might be  
4 simpler that way.

15:25 5 THE REPORTER: Well, I can kind of piece it  
6 together. I mean, people are talking on top of each  
7 other.

8 Q. BY MR. CHATTERJEE: Mr. Vachani, you knew the  
9 Facebook terms of service did not allow users to access  
15:26 10 the Facebook web site in the way that Power wanted to  
11 access the web site, correct?

12 MR. FISHER: Objection. Assumes facts not in  
13 evidence. Lacks foundation. Incomplete hypothetical.  
14 Vague. Calls for legal conclusion.

15:26 15 THE WITNESS: I repeat what he said and I am  
16 going to hold to that.

17 MR. CHATTERJEE: Would you read the question  
18 back, please.

19 (Whereupon the record was read as requested.)

15:26 20 THE WITNESS: And I think I already answered  
21 that question. Do you want to read -- read when I  
22 responded when he asked it the first time back?

23 Q. BY MR. CHATTERJEE: First time I asked the  
24 question that way, Mr. Vachani.

15:26 25 A. No. But, well -- can you -- can you repeat

1 the answer I -- I made to my previous question back to  
2 Neel? The one that was asked differently? Would you be  
3 able to repeat that?

4 Q. Why don't you answer my question.

15:27 5 A. I'm asking her -- I'm asking if she can repeat  
6 the answer.

7 Q. I get to ask the questions here, Mr. Vachani.  
8 Can you answer my question?

9 A. And I get to also ask her to repeat it so I  
15:27 10 can clarify what I said.

11 Q. You can have her read my question --

12 A. So I would like -- I would like --

13 Q. Mr. Vachani, it's my deposition. I ask you  
14 questions, you give answers. That's the way this works.

15:27 15 A. I gave an answer. Okay? And I'm asking -- I  
16 also have the right to ask her to repeat what I just  
17 said here. So will you please just stay relaxed and let  
18 me ask this -- let me ask her to repeat that. And then  
19 I will lis -- and then if appropriate I will -- I will  
15:27 20 either repeat the same answer or I will -- I will make a  
21 change. Okay?

22 Q. Can you answer my question or not?

23 A. Yes. But can I -- can I ask her to repeat  
24 what she recorded from what I just said? I have the  
15:27 25 right to do that, don't I?

1 Q. I'm going to ask you the question one more  
2 time.

3 A. But I --

4 Q. No. Mr. Vachani, you can either answer it or  
15:27 5 you can't. If you can't answer it, tell me you can't  
6 answer it.

7 You knew that the Facebook terms of service  
8 did not allow Power users to access the Facebook web  
9 site in the way Power wanted to do it; isn't that right?

15:28 10 MR. FISHER: Objection. Assumes facts not in  
11 evidence. Lacks foundation. Argumentative. Vague.

12 THE WITNESS: And I would like to -- once  
13 again, I would like to ask you the previous question,  
14 can you repeat my answer? I -- I'm not answering your  
15:28 15 question yet. I'm asking her to repeat the answer I  
16 made to your previous question which was similar.

17 MR. CHATTERJEE: Okay. Let's take a break.  
18 Tim, we're doing our meet and confer right now.

19 THE VIDEOGRAPHER: We are going off the  
15:28 20 record. The time is 3:28 p.m.

21 (Whereupon a break was taken from 3:28 to  
22 3:37.)

23 THE VIDEOGRAPHER: We are back on the record.  
24 The time is 3:37 p.m.

15:37 25 THE WITNESS: So I previously wanted -- I

1 asked if I -- if it was possible for her to read back my  
2 answer so I could listen to what -- what she recorded  
3 for the previous answer, which you were not satisfied  
4 with, so I can hear it and -- and then think about your  
15:37 5 question again. Can I do that?

6 MR. CHATTERJEE: Read my question back,  
7 please, Madam Court Reporter.

8 THE WITNESS: Not the question. I've asked  
9 her to read back --

15:38 10 Q. BY MR. CHATTERJEE: The answer's no. Answer  
11 my question, Mr. Vachani. Are you going to answer it or  
12 not?

13 A. Let me ask a question. I don't know who --  
14 who creates the rules here. I'm -- previously when I  
15:38 15 had a question and I wanted to hear something, I was  
16 allowed to. How come I'm not allowed to now?

17 Q. The rules, Mr. Vachani, are very simple. I  
18 ask a question, you give an answer.

19 A. And I'm not -- I'm now allowed -- you're  
15:38 20 saying that I am not allowed to ask her to repeat?

21 Q. You -- you will have a chance to review your  
22 deposition afterwards and make any changes you think are  
23 appropriate. You've chosen not to do that with respect  
24 your 2011 deposition, even though there are clear errors  
15:38 25 in it.

1 similar process where almost -- where -- where almost,  
2 for example, Google has a clause that states in their  
3 things that users cannot do it, but Facebook has  
4 continued to do it. And -- and I'll ignore these  
15:40 5 things.

6 And I said about five minutes ago -- let me  
7 finish, please.

8 Q. BY MR. CHATTERJEE: Finish.

9 A. I said five minutes ago that terms and  
15:40 10 conditions are created by -- by a site. And the  
11 decision -- the decision on -- on interpreting those  
12 terms and conditions and how companies choose to respond  
13 to their users have been and continue to be very  
14 subjective. Facebook has been very subjective, Power  
15:40 15 has been very subjective, and there is no legal  
16 precedent. So we can have a discussion all day on this  
17 issue. But I've answered the question to you that I --  
18 we are very familiar and have read Facebook terms and  
19 conditions.

15:41 20 Q. Okay. Let's step back. You said you've read  
21 Facebook's terms and conditions. That was prior to  
22 accessing the Facebook web site as pursuant to the  
23 December 2008 launch, correct?

24 A. Yes.

15:41 25 Q. Did you believe under your reading of the

1 terms and conditions of Facebook's web site that the  
2 access that Power was engaging in was a violation of the  
3 terms of service or was it allowed by the terms of  
4 service?

15:41 5 MR. FISHER: By "you," do you mean him in his  
6 individual capacity now, Neel?

7 MR. CHATTERJEE: I will start there.

8 THE WITNESS: Do I believe in my individual  
9 capacity that is a violation of what? Of the Facebook  
10 terms and service?  
15:41

11 Q. BY MR. CHATTERJEE: Yeah. Let me state it a  
12 different way. Did you believe that the -- that the  
13 terms of service of the Facebook agreement authorized  
14 Power users to access the Facebook web site in the way  
15 the Power system operated?  
15:42

16 MR. FISHER: Objection. Vague. Calls for a  
17 legal conclusion. You may answer.

18 THE WITNESS: And I think I've answered this  
19 previously and today. Is that as part of our analysis  
20 we've looked at not only Facebook -- and this is -- I'm  
21 not a lawyer and -- but I'm telling you, you asked me  
22 personally. In part of our analysis we looked at  
23 Facebook's previous conduct in addressing this issue  
24 with many other sites and their blatant violation of --  
15:42 25 of terms of conditions on -- and exacting data, we

1 looked at the industry as a whole, and we saw no -- no  
2 precedent for -- you know, on these issues and therefore  
3 felt that if it was an issue, this is something that  
4 would be determined -- and it has been determined by the  
15:42 5 courts. Finally, I -- I believe --

6 Q. BY MR. CHATTERJEE: Okay. There -- there  
7 might be some confusion in my question.

8 A. Okay.

9 Q. I'm not asking about anything other than the  
15:42 10 terms of service. Just that standing alone.

11 A. Okay.

12 Q. Was there any concern in your mind when you  
13 read that terms of service that the way Power wanted to  
14 access the Facebook web site would be a violation of  
15:43 15 Facebook's terms of service?

16 MR. FISHER: Objection. Vague. Calls for a  
17 legal conclusion.

18 THE WITNESS: I would agree calls -- you're  
19 asking for a legal conclusion that I'm not able to --

15:43 20 Q. BY MR. CHATTERJEE: I'm just asking you for  
21 whether there was any concern in your mind, not whether  
22 there's a legal violation.

23 A. Concern is irrelevant. You know, this is --  
24 you're asking me --

15:43 25 Q. Mr. Vachani, it is not a matter of you to

1 determine relevance or not.

2 Was there a concern in your mind or not?

3 A. Was there a concern?

4 MR. FISHER: Same objections. Argumentative.

15:43 5 THE WITNESS: I think our company's actions  
6 speak for themselves. Because, you know, I'm -- I was  
7 the CEO of the company. And the company -- the company  
8 made a -- made a -- made a decision which I've already  
9 articulated, testified, and -- and I've also -- we've  
10 also had years -- we've had years of discussions on this  
11 issue, we've had court rulings on this issue, and you  
12 continue to ask the same question which I think we're --  
13 we're -- you know --

14 Q. BY MR. CHATTERJEE: It's because you're not  
15:43 15 listening to my question. I'm going to move on.

16 A. I am listening to my question.

17 Q. You aren't. We're going -- Mr. Vachani --

18 MR. FISHER: There's no point to arguing about  
19 this. Go to the next question.

15:43 20 Q. BY MR. CHATTERJEE: -- we're going to go to  
21 court over this. We're going to have these questions  
22 answered.

23 A. Do you mind asking the question one more time?

24 Q. You're not answering them now. No. I'm --  
15:44 25 I'm done. I've asked it ten times. You don't want to



1 exhibit, 219.

2 (Plaintiff's Exhibit No. 219 marked for  
3 identification.)

4 THE WITNESS: Okay. Go ahead.

16:30 5 Q. BY MR. CHATTERJEE: What is this document?

6 A. This is a -- a screen shot. I don't know if  
7 this is a mock screen shot or whatever, but of -- of how  
8 the campaign for 100 would look like. I think this is  
9 probably a mock screen shot.

16:31 10 Q. It's a mock? So it's not an actual one?

11 A. I don't -- I don't know the difference. I  
12 mean, I -- I would have received -- you know, when we  
13 were launching the campaign they would -- they would  
14 most likely have sent to -- you know, we had previews of  
16:31 15 what it would look like. But this is -- this is more or  
16 less the general way that it would look -- that it would  
17 look -- that it would like.

18 Q. And if you look in the middle of the page  
19 there's a section that says e-mails.

16:31 20 A. Yep.

21 Q. And there's a little Facebook logo. Do you  
22 see that?

23 A. Yes.

24 Q. I think you said earlier that you couldn't  
16:31 25 send e-mails to Facebook users. Why is it in that box?

1 A. Our future -- I believe -- there are two  
2 explanations for this. One is it was our intention in  
3 the future to -- to send Facebook messages even if it  
4 was not a -- we, in fact, even built a thing in the  
16:32 5 database which you guys referred to that was -- we have  
6 never -- we have not used. But to be able to -- so I  
7 think our intention in the future was going to be to --  
8 to send private messages instead of e-mails. If a  
9 person wanted to communicate, send a message -- if they  
16:32 10 wanted to send an invitation to a friend instead of an  
11 e-mail, they could send it as a private message box.  
12 And we built a -- a database.

13 Q. You built a tool for that?

14 A. A tool for that. I don't know -- I don't know  
16:32 15 -- I believe we never -- never used it. So this was --  
16 but the second is if we already had -- there were very  
17 small amount of users. But if a user has already had  
18 the e-mail address because it was either manually  
19 entered or a user manually put the e-mail address in or  
16:32 20 they had the e-mail address because it corresponded with  
21 an e-mail in Orkut, I think we also had the ability to  
22 cross -- cross-reference when an e-mail address was not  
23 from Orkut but it was given to us by -- so I think --  
24 but I don't -- I don't believe any of those were ever  
16:32 25 actually put into action if I -- to the best of my

1 recollection.

2 Q. Which one of these would you click on, if any,  
3 if you wanted to do the event invitations through  
4 Facebook?

16:33 5 A. This -- this was not -- the event invitation  
6 was not -- this is not from this page, this part here.

7 Q. This was a separate form?

8 A. It was a -- it was either -- I think you --  
9 you could either go create an event and there was also  
16:33 10 a -- a separate banner which said create an event on  
11 Facebook where the user said I want to create an event  
12 or I want to post a status update.

13 Q. Is that the one where there were, like,  
14 several boxes --

16:33 15 A. Yeah. I believe you guys -- yeah -- have  
16 that -- that -- that image.

17 Q. And do you know what the default was? Did the  
18 default have all of the boxes checked or some of them  
19 checked?

16:33 20 A. I don't. But I -- but I know that the user --  
21 there was a box saying create an event.

22 Q. Okay.

23 (Plaintiff's [Exhibit No. 220](#) marked for  
24 identification.)

16:35 25 Q. BY MR. CHATTERJEE: And again we've attached a

1 messaging is an equally-important communication channel.  
2 So we wanted to give our users the right and the  
3 opportunity, if they want to, to also be able to send  
4 messages to Facebook mailboxes. And that was part off  
16:37 5 our intention. We built a database scheme up, you know,  
6 for that, but I -- I don't believe that we ever got  
7 around to that.

8 Q. Was -- was it important at all that it be the  
9 users that were sending these messages instead of Power?

16:37 10 A. Well, users -- when you -- if you're familiar  
11 with the way that -- that -- if a -- user-generated  
12 invitations typically work on Facebook, on Google,  
13 everything else, you typically -- you basically are  
14 shown a list. On hi5 --

16:37 15 Q. Right. And I'm not talking about how the  
16 technology works.

17 A. Yeah. But I was talking about generally the  
18 way they work, you're basically able to choose friends  
19 to send to and you have different options.

16:37 20 Q. Right.

21 A. And so it was really --

22 Q. But I'm not -- I'm not talking about how the  
23 users felt.

24 A. Okay.

16:37 25 Q. I'm asking was it important to Power that the

1 DEPOSITION OFFICER'S CERTIFICATE

2 (Civ. Proc. § 2025.520(e))

3 STATE OF CALIFORNIA )  
 4 ) ss  
 5 COUNTY OF CONTRA COSTA )

6 I, CHERREE P. PETERSON, hereby certify:

7 I am a duly qualified Certified Shorthand  
 8 Reporter, in the State of California, holder of  
 9 Certificate Number CSR 11108 issued by the Court  
 10 Reporters Board of California and which is in full force  
 11 and effect. (Fed. R. Civ. P. 28(a)).

12 I am authorized to administer oaths or  
 13 affirmations pursuant to California Code of Civil  
 14 Procedure, Section 2093(b) and prior to being examined,  
 15 the witness was first duly sworn by me. (Fed. R. Civ.  
 16 P. 28(a), 30(f)(1)).

17 I am not a relative or employee of any attorney  
 18 or counsel of any of the parties, nor am I a relative or  
 19 employee of such attorney or counsel, nor am I  
 20 financially interested in this action. (Fed. R. Civ. P.  
 21 28).

22 I am the deposition officer that  
 23 stenographically recorded the testimony in the foregoing  
 24 deposition and the foregoing transcript is a true record  
 25 of the testimony given by the witness. (Fed. R. Civ. P.

1 30(f)(1)).

2 Before completion of the deposition, review of  
3 the transcript (XX) was ( ) was not requested. If  
4 requested, any changes made by the deponent (and  
5 provided to the reporter) during the period allowed, are  
6 appended hereto. (Fed. R. Civ. P. 30(e)).

7

8 Dated: JANUARY 13, 2012

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Chernee P. Peterson

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